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16  
17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19

20 SHANNON SOBASZKIEWICZ and KEVIN  
21 STERLING, individually and on behalf of all  
22 others similarly situated, and as a proxy of  
the State of California on behalf of aggrieved  
23 employees, and Herman Overpeck,  
individually only,

24 Plaintiffs,

25 v.

26 FEDEX CORPORATION; FEDEX  
GROUND PACKAGE SYSTEM, INC.,

27 Defendants.  
28

Case No: 4:18-cv-07553-PJH (DMR)

**UPDATED JOINT CASE MANAGEMENT  
STATEMENT**

Date: September 15, 2022

Time: 2:00 p.m.

Dept.: Courtroom No. 3, 3rd Floor

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28 FEDEX CORPORATION

1 Pursuant to the Court’s order of September 1, 2022, the Parties submit an updated case  
2 management statement in advance of the Case Management Conference set for September 15, 2022,  
3 at 2:00 p.m. Plaintiffs Overpeck, Sterling, and Sobaszkiewicz (“Plaintiffs”), FedEx Ground, and  
4 FedEx Corporation, (collectively, “the Parties”) have conferred and state as follows (given the  
5 multitude of previous case management statements filed previously, the Parties submit here only  
6 new developments and scheduling):

7 **I. BACKGROUND**

8 This is a wage and hour suit brought by long-haul and local delivery drivers who allege they  
9 were denied wages, breaks, and other employment protections while providing transportation and  
10 delivery services in California for defendants FedEx Ground Package System, Inc., and FedEx  
11 Corporation. Plaintiffs allege that they are jointly employed by FedEx Ground and the service  
12 providers who have contracts with FedEx Ground, and that FedEx Corporation is an integrated  
13 enterprise with FedEx Ground. Plaintiffs allege that FedEx Ground has direct and/or indirect control  
14 over their wages, hours and working conditions, and suffers and permits their work, but has denied  
15 them the employment protections they are entitled to under California law. Defendants deny that  
16 they are joint employers of Plaintiffs under California law and deny that Plaintiffs ever provided  
17 them transportation and delivery services as Plaintiffs claim. FedEx Ground contends that the service  
18 providers with which it contracts run independent businesses and manage, schedule, pay, and  
19 otherwise direct their own employees as they see fit. FedEx Corporation claims that its involvement  
20 is even more removed than FedEx Ground’s; FedEx Corporation does not contract with service  
21 providers or have any interaction whatsoever with their drivers.

22 **II. MOTIONS**

23 The Court denied Plaintiffs’ motion for class certification on March 25, 2022 (ECF No. 362).  
24 The Court granted in part and denied in part FedEx Ground’s motion for summary judgment on  
25 September 1, 2022 (ECF No. 392). The parties stipulate that, subject to Court approval, the Court’s  
26 summary judgment order applies to the claims asserted against FedEx Corporation equally as to the  
27 claims asserted against FedEx Ground. FedEx Corporation may decide to file a motion for summary  
28 judgment on separate bases. The parties will meet and confer before the filing of any such motion to

determine if any issues can be resolved or narrowed without the need for additional discovery, depositions or motion practice on the issues for which FedEx Corporation might otherwise move.

FedEx Ground anticipates filing a motion to strike Plaintiffs' PAGA claim. FedEx Corporation may join in that motion. FedEx Ground anticipates filing said motion no later than January 16, 2022, but may request a reasonable extension to do so based on a pending case before the California Supreme Court.

Plaintiffs' preference is not to have additional motion practice, but instead to proceed to trial in or about April 2023, as proposed below, or at the earliest date thereafter that the Court might be available. In the event the trial is pushed back due to further motion practice by Defendant(s), Plaintiffs would request the opportunity to bring a motion for summary adjudication on the joint employer issue during the time period reserved for such further motion practice.

Other than pre-trial motions, such as motions related to experts and motions in limine, the parties do not expect other motion practice before trial.

### **III. LEGAL ISSUES**

The disputed claims that remain in the case are as follows:

1. Failure to Pay for All Hours Worked, Cal. Labor Code §§ 201, 202, 204, 221-23, and 226.2, except to the extent derivative of (i) all Plaintiffs' now-dismissed common law fraud and conversion claims, (ii) Overpeck's and Sobaszkievicz's now-dismissed meal and rest break claims and overtime claim, and (iii) Sterling's meal and rest break claims and overtime claim for days in which he drove vehicles with a GVWR of 10,001 pounds or more. The Parties continue to dispute the application of a "short-haul exception," with Defendants contending such a purported exception does not exist as described by Plaintiffs and does not apply to Sterling at all. Plaintiffs believe that the short-haul exception exists and applies to Sterling.

2. Failure to Provide Meal Periods, Cal. Labor Code §§ 226.7, 512 and 8 Cal. Code Regs. § 11090, remains only for Sterling, for days in which he drove vehicles with a GVWR of 10,000 pounds or less. The Parties continue to dispute the application of a "short-haul exception," with Defendants contending such a purported exception does not exist as described by Plaintiffs and

1 does not apply to Sterling at all. Plaintiffs believe that the short-haul exception exists and applies to  
2 Sterling.

3           3.       Failure to Provide Rest Periods, Cal. Labor Code § 226.7 and 8 Cal. Code Regs.  
4 § 11090, remains only for Sterling, for weeks in which he drove vehicles with a GVWR of 10,000  
5 pounds or less. The Parties continue to dispute the application of a “short-haul exception,” with  
6 Defendants contending such a purported exception does not exist as described by Plaintiffs and does  
7 not apply to Sterling at all. Plaintiffs believe that the short-haul exception exists and applies to  
8 Sterling.

9           4.       Failure to Pay Minimum Wages, Cal. Labor Code §§ 1182.11–82.12, 1194, and  
10 1197–97.1, except to the extent derivative of (i) all Plaintiffs’ now-dismissed common law fraud and  
11 conversion claims, (ii) Overpeck’s and Sobaszkievicz’s now-dismissed meal and rest break claims  
12 and overtime claim, and (iii) Sterling’s meal and rest break claims and overtime claim for weeks in  
13 which he drove vehicles with a GVWR of 10,001 pounds or more. The Parties continue to dispute  
14 the application of a “short-haul exception,” with Defendants contending such a purported exception  
15 does not exist as described by Plaintiffs and does not apply to Sterling at all. Plaintiffs believe that  
16 the short-haul exception exists and applies to Sterling.

17           5.       Failure to Pay Overtime Compensation, Cal. Labor Code §§ 510, 515.5, 1194, and  
18 1198 et seq., remains only for Sterling, for weeks in which he drove vehicles with a GVWR of  
19 10,000 pounds or less. The Parties continue to dispute the application of a “short-haul exception,”  
20 with Defendants contending such a purported exception does not exist as described by Plaintiffs and  
21 does not apply to Sterling at all. Plaintiffs believe that the short-haul exception exists and applies to  
22 Sterling.

23           6.       Failure to Keep Payroll Records, Cal. Labor Code §§ 1174–74.5. It is Defendants’  
24 position that this claim still remains in the case, except to the extent derivative of (i) all Plaintiffs’  
25 now-dismissed common law fraud and conversion claims, (ii) Overpeck’s and Sobaszkievicz’s now-  
26 dismissed meal and rest break claims and overtime claim, and (iii) Sterling’s meal and rest break  
27 claims and overtime claim for weeks in which he drove vehicles with a GVWR of 10,001 pounds or  
28 more.

1           7.       Failure to Furnish Accurate Wage Statements, Cal. Labor Code § 226, except claim  
2 cannot be based on FedEx Ground's name and information missing from wage statements (Court  
3 granted summary judgment on that theory), and except to the extent derivative of (i) all Plaintiffs'  
4 now-dismissed common law fraud and conversion claims, (ii) Overpeck's and Sobaszkiewicz's now-  
5 dismissed meal and rest break claims and overtime claim, (iii) Sterling's meal and rest break claims  
6 and overtime claim for weeks in which he drove vehicles with a GVWR of 10,001 pounds or more.  
7 The Parties continue to dispute the application of a "short-haul exception," with Defendants  
8 contending such a purported exception does not exist as described by Plaintiffs and does not apply to  
9 Sterling at all. Plaintiffs believe that the short-haul exception exists and applies to Sterling.

10           8.       Waiting Time Penalties, Cal. Labor Code §§ 201–03. It is Defendants' position that  
11 this claim still remains in the case, except to the extent derivative of (i) all Plaintiffs' now-dismissed  
12 common law fraud and conversion claims, (ii) Overpeck's and Sobaszkiewicz's now-dismissed meal  
13 and rest break claims and overtime claim, and (iii) Sterling's meal and rest break claims and  
14 overtime claim for weeks in which he drove vehicles with a GVWR of 10,001 pounds or more.

15           9.       Unfair Competition and Unlawful Business Practices, Cal. Bus. & Prof. Code  
16 § 17200, et seq., except to the extent derivative of (i) all Plaintiffs' now-dismissed common law  
17 fraud and conversion claims, (ii) Overpeck's and Sobaszkiewicz's now-dismissed meal and rest  
18 break claims and overtime claim, (iii) Sterling's meal and rest break claims and overtime claim for  
19 weeks in which he drove vehicles with a GVWR of 10,001 pounds or more, and (iv) Plaintiffs'  
20 inaccurate wage statement claim based on the absence of FedEx Ground's name and information  
21 from the wage statements. The Parties continue to dispute the application of a "short-haul  
22 exception," with Defendants contending such a purported exception does not exist as described by  
23 Plaintiffs and does not apply to Sterling at all. Plaintiffs believe that the short-haul exception exists  
24 and applies to Sterling.

25           10.      Private Attorneys General Act violations, Cal. Labor Code § 2698, et seq., except to  
26 the extent derivative of (i) all Plaintiffs' now-dismissed common law fraud and conversion claims,  
27 (ii) Overpeck's and Sobaszkiewicz's now-dismissed meal and rest break claims and overtime claim,  
28 (iii) Sterling's meal and rest break claims and overtime claim for weeks in which he drove vehicles

1 with a GVWR of 10,001 pounds or more, and (iv) Plaintiffs' inaccurate wage statement claim based  
2 on the absence of FedEx Ground's name and information from the wage statements. The Parties  
3 continue to dispute the application of a "short-haul exception," with Defendants contending such a  
4 purported exception does not exist as described by Plaintiffs and does not apply to Sterling at all.  
5 Plaintiffs believe that the short-haul exception exists and applies to Sterling.

#### 6 **IV. DISCLOSURES**

7 The Parties will supplement their disclosures and discovery responses related to the  
8 remaining claims, defenses, and Plaintiffs no later than October 21, 2022.

#### 9 **V. DISCOVERY**

10 The Parties agree that substantial class discovery has been taken to date in this case. Plaintiffs  
11 seek time to complete merits and damages discovery related to the three named Plaintiffs, much of  
12 which may be coming from third parties, such as the former Service Providers of Plaintiffs.  
13 Defendants disagree with Plaintiffs' characterization that merits and damages discovery related to  
14 the three named Plaintiffs has not been conducted; it is Defendants' position that all such discovery  
15 has taken place. It is FedEx Ground's position that it has produced to Plaintiffs everything it has  
16 related to Plaintiffs; and when FedEx Ground deposed Plaintiffs, there was no "class discovery"  
17 limitation placed on them. Defendants agree that there might be limited additional discovery to  
18 conduct related to the three named Plaintiffs from their Service Provider employers.

19 The Parties agree to meet and confer as needed if there are any disputes or concerns as to the  
20 quantity or scope of such discovery.

#### 21 Plaintiffs' Further Position on Discovery:

22 Plaintiffs will conduct discovery to obtain payroll data, records of hours worked, and records  
23 of meal and rest periods provided (if any), specific to them. Plaintiffs also will conduct discovery of  
24 the local policies (if any) specific to the service providers under which they worked, as well as  
25 business discussions and communications these service providers had with FedEx concerning the  
26 Plaintiffs, their vehicles and routes. Plaintiffs anticipate that most of this discovery may need come  
27 from the service providers through subpoenas and/or stipulations. While Defendants previously  
28

1 subpoenaed some of this information from the service providers, Plaintiffs believe there are gaps in  
2 the production and further discovery is necessary to ensure all available records are produced.

3 In addition to written discovery, Plaintiffs may take depositions of the owners or business  
4 operators of the service providers as well as depositions of facility-level FedEx Ground employees  
5 (e.g. managers, dispatchers, contract liaisons, etc.), where Plaintiffs worked. Finally, Plaintiffs will  
6 seek discovery to ensure that any scanner data, driver log data, safety reports, audit data, or other  
7 records pertaining to them in particular, which are in the possession of FedEx, are produced (to the  
8 extent they are not already produced with the supplemental disclosures referenced above or  
9 previously).

10 In response to FedEx's position statement below, Plaintiffs also note that the discovery they  
11 took leading up to the motion for class certification did not focus on records or interactions specific  
12 to them, their routes, or the facilities out of which they worked. While there was some overlap  
13 between class and merits discovery, the previous discovery plans focused on policies and procedures  
14 generally applicable to the classes alleged at the time, while contemplating that further merits  
15 discovery would happen at a later stage. *See* Dkt. 36; 63, 72, & 170. Moreover, while Defendants  
16 took the depositions of various service providers before the motion for class certification, those were  
17 taken pursuant to deposition notices that had specific subjects defined by Defendants. While  
18 Plaintiffs' counsel asked follow-up questions during the depositions, such questions were in the  
19 context of vetting the alleged indispensable party status of the contractors and obtaining evidence to  
20 support the motion for class certification. They did not focus on the individual circumstances or  
21 claims of the individual Plaintiffs. That said, Plaintiffs are not seeking to duplicate discovery; rather,  
22 Plaintiffs simply request that they not be limited to the previous class discovery and/or the discovery  
23 that Defendants conducted during the class discovery phase of the case.

24  
25 FedEx Ground's Further Position on Discovery:

26 FedEx Ground believes that the vast majority (if not all) of what Plaintiffs contend they think  
27 they need in terms of discovery has already been completed, and that further requests to depose  
28 individuals from FedEx Ground would be duplicative, unnecessary, and disproportionate to the



1 needs of the case. Also, the Service Providers that employed Plaintiffs have all already been deposed  
2 and provided documents. FedEx Ground agrees to confer in good faith with Plaintiffs' counsel to  
3 attempt to reach compromises acceptable to both sides on these issues once Plaintiffs identify more  
4 specifically who they seek to depose.

5 If any Plaintiff continued to work for a Service Provider past the time of their depositions, it  
6 is possible FedEx Ground may need to depose those Plaintiffs solely on the pertinent time not  
7 already covered. If any Plaintiff worked for an additional Service Provider in the last two years, and  
8 that Service Provider has not yet been deposed, FedEx Ground may join Plaintiffs' request to depose  
9 any such Service Provider.

10 FedEx Ground proposes that written discovery be limited to no more than Five Requests for  
11 Production, Five Interrogatories, and Ten Requests for Admission. Plaintiffs have already issued 119  
12 document requests to FedEx Ground in this case.

13 Finally, as shown in FedEx Ground's reply in support of its summary judgment motion (ECF  
14 No. 386) and the attached evidence, discovery was never bifurcated in this case. Indeed, the Parties  
15 jointly stated in March of 2019 in the Joint Case Management Statement (ECF No. 36) that: "the  
16 parties recognize that there will be overlap between pre-certification discovery going to the propriety  
17 of class certification and merits discovery, and as such, at this time it does not make sense to  
18 formalize any bifurcation between class and merits discovery."

19  
20 FedEx Corporation's Further Position on Discovery:

21 FedEx Corporation anticipates taking limited additional discovery to support and clarify the  
22 grounds for summary judgment that are unique to it, but believes for the time being that it can likely  
23 be limited to 5 Requests for Production, 5 Interrogatories, and 10 Requests for Admission. FedEx  
24 Corporation will notify the parties and if necessary seek leave, if a need arises in future for  
25 additional discovery.

26 **VI. RELIEF**

27 Plaintiffs' Statement:

28 Plaintiffs will be seeking damages at trial for the following alleged violations:

1       1. Failure to Pay for All Hours Worked and Failure to Pay Minimum Wage

2           Plaintiffs will seek compensation for off-the-clocked work at either the applicable minimum  
3 wage and/or regular rate of pay. This applies to non-driving time that is not covered by the pay  
4 scheme in place, such as time spent in the facilities, prepping vehicles, doing work in the FedEx  
5 yard, waiting to be dispatched, and time spent in the sleeper berth. It also pertains to unpaid  
6 overtime and noncompliant meal and rest periods for Plaintiff Sterling on days when he drove light  
7 vehicles and/or short-haul routes. Plaintiffs can calculate these damages by multiplying the  
8 estimated time per day they spent performing these uncompensated activities,<sup>1</sup> by their total number  
9 of workdays, and then again by the applicable minimum wage and/or regular rate of pay during the  
10 time periods at issue (and corresponding overtime rate for Mr. Sterling when the unpaid time  
11 exceeds 8 hours in a day or 40 hours in a week on days that he drove light vehicles and/or short-haul  
12 routes).<sup>2</sup> Plaintiffs request the opportunity to obtain complete payroll data, scheduling data, route  
13 data, scanner data, driver log data, and records of hours worked maintained by either the service  
14 providers and/or FedEx, before calculating these damages.

15       2. Failure to Provide Compliant Meal Periods

16           Labor Code §§ 226.7 and 512, and Title 8 of the California Code of Regulations § 11090, ¶ 11  
17 prohibit employers from employing an employee for more than five hours without a meal period no  
18 less than thirty (30) minutes and for more than ten (10) hours without a second meal period. These  
19 damages will be determined by multiplying the number of off-duty meal periods not fully and timely  
20 provided to Plaintiffs in compliance with the Wage Order and the California Labor Code by  
21 Plaintiffs' regular rates. The number of off-duty meal periods at issue for the calculations will be

22  
23 <sup>1</sup> Plaintiffs in a wage and hour case may prove damages by reasonable estimation when the  
24 employer(s) do not maintain complete or accurate time records showing their actual hours worked.  
25 *See, e.g., Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946); *Hernandez v. Mendoza*  
199 Cal.App.3d 721, 727 (1988).

26 <sup>2</sup> The regular rate of pay will be either the designated hourly rates of pay or, when paid on a either a  
27 salary, per-mile or other piece rate basis, the total weekly earnings divided by 40 hours per week. *See*  
28 *Skyline Homes, Inc. v. Department of Industrial Relations*, 165 Cal.App.3d 239, 247 (1985),  
disapproved on other grounds in *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557, 574 (1996);  
*Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542, 566 (2018).

1 determined by a combination of FedEx's scanner and driver log data for the named Plaintiffs, any  
2 records maintained by the service providers showing breaks actually provided, and Plaintiffs'  
3 estimates. Plaintiffs request the opportunity to obtain complete payroll data, scheduling data,  
4 scanner and driver log data, and records of hours worked maintained by either the service providers  
5 and/or FedEx, before calculating these damages.

6 3. Failure to Authorize and Permit Compliant Rest Periods

7 California Labor Code §226.7 and Title 8 of the California Code of Regulations § 11090, ¶ 12  
8 require Defendants to authorize and permit off duty rest periods to Plaintiffs and members of the  
9 proposed Class at the rate of ten minutes net rest time per four hours or major fraction thereof.  
10 These damages will be determined by multiplying the number of off-duty rest periods not fully and  
11 timely provided to Plaintiffs in compliance with the Wage Order and the California Labor Code by  
12 Plaintiffs' regular rates. The number of off-duty rest periods at issue for the calculations will be  
13 determined by a combination of FedEx's scanner and driver log data for the named Plaintiffs, any  
14 records maintained by the service providers showing breaks actually provided, and Plaintiffs'  
15 estimates. Plaintiffs request the opportunity to obtain complete payroll data, scheduling data,  
16 scanner and driver log data, and records of hours worked maintained by either the service providers  
17 and/or FedEx, before calculating these damages.

18 4. Failure to Keep Accurate Payroll Records

19 Plaintiffs will seek damages for any willful failure to maintain accurate payroll records,  
20 pursuant to Cal. Lab. Code 1174.5. The amount of the penalty is \$500 per Plaintiff.

21 5. Failure to Furnish Accurate Wage Statements

22 Plaintiffs will seek damages for wage statements that do not accurately reflect the wages  
23 earned and hours worked as a result of the foregoing alleged violations. Pursuant to Labor Code §  
24 226, statutory damages are \$50 for the first inaccurate wage statement and \$100 for subsequent  
25 violations, up to a maximum of \$4,000 per Plaintiff. Plaintiffs request the opportunity to obtain  
26 complete payroll data (including all wage statements), scheduling data, route data, scanner data,  
27 driver log data, and records of hours worked maintained by either the service providers and/or  
28 FedEx, before calculating these damages.

1       6. Waiting Time Penalties

2           Plaintiffs will seek damages for Defendants' knowing and intentional failure to pay full  
3 compensation owed upon termination. Pursuant to Lab. Code § 203, this will equate to 30 days of  
4 wages, which Plaintiffs will calculate based on the wages they earned on a daily basis at the time of  
5 their separation of employment. The parties have stipulated that these penalties can be decided by  
6 the Court, if necessary, after the jury trial. Plaintiffs request the opportunity to obtain complete  
7 payroll data, scheduling data, route data, scanner data, driver log data, and records of hours worked  
8 maintained by either the service providers and/or FedEx, before calculating these damages.

9       7. PAGA Penalties

10           The parties agree that trial of Plaintiffs' PAGA claim is to the Court, which includes  
11 determination of civil penalties, if any. Plaintiffs request the opportunity to obtain complete payroll  
12 data, showing all payroll periods at each service provider, before calculating these damages.  
13

14           Defendants' Statement:

15           Defendants disagree that Plaintiffs are entitled to any of the relief or damages just described  
16 and in the manner just described. Defendants further object to Plaintiffs' attempt to turn this case  
17 management statement into a legal brief about how they think case law supports certain damages  
18 assumptions, sprung on Defendants just hours before the due date to file this with the Court.  
19 Defendants do not believe that is the intent behind the Parties laying out facts related to their claimed  
20 damages and how to calculate them, and defenses to same. Defendants do not agree to Plaintiffs'  
21 characterization of case law they discuss, but do not think it appropriate to address that in this  
22 document. Defendants preserve all arguments in response and will address them at the appropriate  
23 stage of the case.

24           Defendants disagree that Plaintiffs can prove any liability or damages from Defendants'  
25 records. As Defendants have been stating since the start of this case, Plaintiffs cannot prove liability  
26 or damages on any of their claims without full and complete time and pay records from their Service  
27 Provider employers, as well as their Service Providers' handbooks and testimony setting out things  
28 such as meal and rest break policies.

1 Plaintiffs' purported use of scanner data in an attempt to show hours worked or missed meal  
2 and rest breaks is improper. The scanner data maintained by FedEx Ground is for compliance with  
3 Department of Transportation regulations. The hours measured there are what DOT defines as "on-  
4 duty" hours, and DOT does not permit the recording or excluding any breaks or personal time from  
5 those on-duty hours. As such, scanner data is over-inclusive and cannot be considered to be  
6 "compensable time." Any records of compensable time and meal and rest breaks would have to  
7 come from Plaintiffs' actual employers, the Service Providers. Neither Defendant has such records.  
8 Nor do Defendants have or maintain any pay records or other employment-type records, or records  
9 Plaintiffs reference above that they say they will use to prove their damages, for Plaintiffs, other than  
10 what Plaintiffs' Service Provider employers have already provided to all Parties in this case. For  
11 example, Defendants do not even know what "scheduling data, route data" Plaintiffs are referring to  
12 as Defendants do not maintain such data.

13 Defendants further object to any attempt by Plaintiffs to prove up what they call off-the-clock  
14 time or missed meal and rest breaks using estimates. Estimates which have yet to be properly  
15 disclosed to Defendants, thus likely requiring Defendants an additional opportunity to depose them  
16 once such estimates are disclosed.

## 17 **VII. SETTLEMENT AND ADR**

18 The parties are still discussing whether ADR may be helpful in resolving one or more of the  
19 Plaintiffs' claims. The parties propose that any mandated ADR process occur no later than 30 days  
20 before the deadline for filing the joint pretrial statement (currently proposed as March 8, 2023,  
21 below).

## 22 **VIII. NARROWING OF ISSUES**

23 As discussed above, FedEx Ground anticipates filing a motion to strike Plaintiffs' PAGA  
24 claim. The parties have yet to meet and confer on the basis of the motion. Plaintiffs reserve their  
25 right to oppose the motion.

26 Plaintiffs and FedEx Corporation will meet and confer to determine whether FedEx  
27 Corporation might be dismissed from the case to further narrow issues and claims for trial.

28 Because several of Plaintiffs' claims are tried to the Court only (as described below), the

Parties agree that bifurcation of those claims make sense, to occur, if at all depending on the results of the jury trial, after the jury trial is completed.

### **IX. SCHEDULING**

The Parties agree to the following dates:

1. Expert Disclosures (without reports) to be Used Affirmatively by Any Party: October 28, 2022.
2. Rule 26(a)(2) Expert Reports to be Used Affirmatively by Any Party: November 14, 2022.
3. Responsive/Rebuttal Expert Designations: December 22, 2022.
4. Any Reply Expert Reports (no new experts; supplemental/replies from those disclosed on November 14, 2022, only): January 21, 2023.
5. Discovery Cutoff (including Expert Discovery): February 27, 2023.
6. Joint Pretrial Statement and Other Pretrial Filings Due: March 8, 2023.
7. Pretrial Conference: April 6, 2023, at 2:00 p.m.
- Start of Trial: April 17, 2023.

### **X. TRIAL**

For the claims to be tried to the jury, the Parties anticipate two weeks for trial (considering the Court's days and times available for trial).

Depending on the results of that trial, the Parties then anticipate a later trial to the Court on the following claims:

1. Unfair Competition and Unlawful Business Practices, Cal. Bus. & Prof. Code § 17200, et seq.
2. Private Attorneys General Act, Cal. Labor Code § 2698, et seq.
3. Waiting Time Penalties, Cal. Labor Code §§ 201–03: trial is to the jury on liability, but the Court decides the penalty if the jury finds liability.

1 Respectfully submitted,

2 Dated: September 8, 2022.

WHEELER TRIGG O'DONNELL LLP

3  
4 By: /s/ Jessica G. Scott

JESSICA G. SCOTT

5 Attorney for Defendant

6 FEDEX GROUND PACKAGE SYSTEM, INC.

7 Dated: September 8, 2022.

SCHNEIDER WALLACE COTTRELL

8 KONECKY LLP

9 By: /s/ Joshua Konecky

JOSHUA KONECKY

10 Attorney for PLAINTIFFS

11  
12 Dated: September 8, 2022.

FEDEX CORPORATION

13  
14 By: /s/ Christopher M. Ahearn

CHRISTOPHER M. AHEARN

15 Attorney for Defendant

16 FEDEX CORPORATION

**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on September 8, 2022, I electronically filed the foregoing **UPDATED JOINT CASE MANAGEMENT STATEMENT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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*Original signature on file at the law firm of  
Wheeler Trigg O'Donnell LLP  
[must have this attestation for this court if person  
signing in is not the signer]*

*/s/ Jessica G. Scott*